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January 30, 2001

BY HAND

Hon. Nicholas G. Garaufis
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *European Community v. RJR., et al.*, 00 Civ. 6617 (NGG); *Department of Amazonas, et al. v. Philip Morris Companies Inc., et al.*, 00 Civ. 2881
(Consolidated)

Dear Judge Garaufis:

As directed by the Court, the defendants, including the Philip Morris defendants that we represent, served yesterday by Federal Express delivery on plaintiffs' counsel in this consolidated action, motions to dismiss the complaints, along with their supporting papers. We enclose courtesy copies for the Court of the memoranda of law served by Philip Morris.

In support of their motions to dismiss, the Philip Morris defendants served three legal memoranda: (1) a memorandum, signed and submitted by counsel for all defendants in the suits brought by the Departments of Colombia, seeking to dismiss those complaints pursuant to Federal Rules 12(b)(1) and 12(b)(7) for lack of subject matter jurisdiction and for failure to name an indispensable party; (2) a memorandum in support of a motion by the Philip Morris defendants to dismiss the complaint brought by the European Community under the same rules for lack of subject matter jurisdiction and failure to name indispensable parties; and (3) a memorandum, signed and submitted by counsel for all of the defendants in all of the consolidated cases, in support of their motions under Federal Rule 12(b)(6) to dismiss the complaints for failure to state a claim for relief.

For the convenience of the Court, defendants' counsel have striven mightily to consolidate our papers. While we have not completely succeeded, we have substantially reduced the number of memoranda filed in support of the motions to dismiss. To assist the Court further, we thought it would be helpful to provide a brief roadmap, suggesting a sequence for the Court's review of the several briefs.

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Because the complaints by the Colombian Departments were the first ones filed and because there had been earlier dates for motions to dismiss in those cases, the brief in support of the motion to dismiss for lack of subject matter jurisdiction in the Colombian Departments case was prepared first and contains the most comprehensive treatment of the subject matter jurisdiction issues and precedents. We respectfully suggest that the Court may wish to start with that brief, which contains a thorough analysis of the jurisdictional precedents that are applicable in all of the cases. We suggest that the next briefs to be reviewed are those that support the motions under Rule 12(b)(1) to dismiss the complaint of the European Community for lack of subject matter jurisdiction. As is permitted by the Federal Rules of Civil Procedure, the subject matter jurisdiction briefs are supported by affidavits and exhibits focused on the jurisdictional issues raised by the complaints. Of course, if the Court finds, as we contend, that there is no subject matter jurisdiction for these cases, there will be no need to examine the remaining briefs.

We suggest that, if necessary, after the subject matter jurisdiction briefs, the Court should review the consolidated and individual memoranda in support of the defendants' motions to dismiss under Federal Rule 12(b)(6) for failure to state a claim for relief and to comply with Rule 9(b). The consolidated memorandum, which is endorsed by all defense counsel in this case, does not rely on any affidavits or any extrinsic evidence, and is based solely on applicable U.S. law and foreign law, of which this Court may take judicial notice. This memorandum attempts to demonstrate that, even assuming that there is subject matter jurisdiction and that all of the allegations of the complaints are true, the complaints fail to state a claim for relief under the RICO statute.

Finally, only if the Court finds that it may have subject matter jurisdiction and that the complaints may state a claim for relief, the Court should address the remaining briefs of individual defendants for dismissal because of the applicable statute of limitations and for severance of the claims in the various complaints.

We hope that this roadmap will be useful to the Court. In addition, we are providing the Court herewith a courtesy copy of the expert declarations (the English versions) that support the motions to dismiss for lack of subject matter jurisdiction. All these declarations were served yesterday on plaintiffs' counsel. To spare the Court, we are not supplying at this time the full set of voluminous exhibits that accompany the memoranda. A full set of the exhibits has been served on plaintiffs' counsel and will be filed electronically with our memoranda, after all of the opposition and reply briefs have been served, at which time, the Court will have all of the exhibits. In the meantime, if the Court desires a full set of exhibits at this time, or any of the specific exhibits that are cited in the memoranda, we will be pleased to supply them promptly.

We will advise the Court in a timely fashion if there are any material developments in the Second Circuit appeal by Canada in the *RJR* case dismissed by

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Judge McAvoy or in any of the litigation discussed in the memoranda involving the parties to this action that are currently pending in Europe and the courts of Colombia.

Thank you for your courtesies.

Respectfully submitted,



Irvin B. Nathan

Enclosures

cc: All Counsel of Record
(w/o encls.)